

June 29, 2022

Regional Freedom of Information Officer
U.S. EPA, Region 4
AFC Bldg, 61 Forsyth Street., S.W., 9th Flr (4PM/IF)
Atlanta, GA 30303-8960
via www.FOIAonline.gov only

Re: Request Pursuant to Freedom of Information Act

To Whom It May Concern:

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, and on behalf of our clients, Jeff Frank and the Friends of Floyds Fork, we hereby request that your office produce within 20 business days the following records:

- (1) All hydrologic and other models regarding nutrient pollution of Floyds Fork in Jefferson County, Kentucky, produced to the Kentucky Energy and Environment Cabinet since January 1, 2020 through the date that searches are conducted for records responsive to this FOIA request. Please include the following:
 - a. All calibration scenarios,
 - b. All modeled scenarios,
 - c. All results, and
 - d. All confidence level assessments for the scenarios.
- (2) All data, reports, and results related to on site Floyds Fork water quality assessments since September 1, 2018 through the date that searches are conducted for records responsive to this FOIA request.
- (3) All correspondence between U.S. EPA Region IV and the Kentucky Energy and Environment Cabinet regarding a Floyds Fork TMDL or modeling related to Floyds Fork TMDL since January 1, 2020 through the date that searches are conducted for records responsive to this FOIA request.

Margaret Stebbins, the U.S. EPA Region IV 303(d)/TMDL contact for Kentucky, will likely have documents and information responsive to these requests. Her contact information is:

Margaret Stebbins
stebbins.margaret@epa.gov
(404) 562-9393

FEE WAIVER

FOIA provides that any fees associated with a request are waived if “disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii). Our clients work to maintain and protect Floyds Fork, the largest watershed in Jefferson County, Kentucky. This request is submitted in consort with their mission to protect Floyds Fork, a vital tributary that remains one of the least-polluted waterways in Louisville, that is likely to contribute significantly to the public’s ability to enjoy the Floyds Fork and the area surrounding it. This request satisfies the EPA’s requirements for a fee waiver in 28 C.F.R. § 16.10(k)(2)(i) through (iii):

- i. The requested information would shed light on the operations or activities of the government because the records requested are solely communications between federal and state agencies in regard to Floyds Fork TMDL modeling and development, including the distribution of this information to the public through our clients’ advocacy networks and members, media, local and state government officials, and the general public.
- ii. The records requested by our clients are in the public interest and would contribute to a greater understanding by the public of the ongoing efforts to maintain and protect Floyds Fork. *See Citizens for Responsibility and Ethics in Washington v. U.S. Dept. of Justice*, 602 F. Supp. 2d 121 (D.C. Cir. 2009); and
- iii. Our clients have no commercial interests that would be furthered by the requested disclosure.

In addition to satisfying the requirements for a waiver of fees associated with the search and processing of records, our clients are entitled to a waiver of all fees except “reasonable standard charges for document duplication.” 5 U.S.C. § 552(a)(4)(A)(ii)(II).

RESPONSIVE RECORDS

We request that all types of records and all records systems be searched to discover records responsive to my request. We seek records in all media and formats. This includes, but is not limited to: agendas, manifests, calendars, schedules, notes, and any prepared documentation for meetings, calls, teleconferences, or other discussions responsive to our request; voicemails; emails; email attachments; talking points; faxes; training documents and guides; tables of contents of binders; documents pertaining to instruction and coordination of couriers; and any other materials. However, you need not produce press clippings and news articles that are unaccompanied by any commentary (e.g., an email forwarding a news article with no additional commentary in the email thread).

We request that you search your records from all components of the Environmental Protection Agency that may be reasonably likely to produce results. Also, we ask that you search all systems of record, including electronic and paper, in use at your agency as well as

files or emails in the personal custody of your employees, such as personal email accounts, as required by FOIA and to the extent that they are reasonably likely to contain responsive records. We would prefer records in electronic format, saved as PDF documents, and transmitted via email or flash drive.

If you make a determination that any responsive record, or any segment within a record, is exempt from disclosure, please provide an index of those records at the time you transmit all other responsive records. In the index, please include description of the record and the reason the record for exclusion with respect to each individual exempt record or exempt portion of a record, as provided by *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973), cert denied, 415 U.S. 977 (1974). When you deem a portion of a record exempt, I ask that the remainder of the records to be provided, as required by 5 U.S.C. § 552(b).

Given the 20-day statutory deadline, we hope to be as helpful as possible in clarifying or answering questions about my request. Please contact us at jtaylor@strobobarkley.com or (502) 290-9750, extension 3. If you require any additional information. I appreciate your cooperation and look forward to hearing from you very soon.

Best regards,

A handwritten signature in blue ink, appearing to read 'Randy Strobo', with a stylized flourish extending to the right.

Randy Strobo
Julia Taylor

*Counsel for Jeff Frank and
Friends of Floyds Fork*

cc: Margaret Stebbins
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